

HOUSE No. 2041

By Mr. Petruccelli of Boston, petition of Anthony Petruccelli relative to regulating the transportation of hazardous material. Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO UNIFORM HAZARDOUS MATERIAL TRANSPORTATION PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Short Title. This act shall be known and may be
2 cited as the “Hazardous Materials Transportation Uniform Proce-
3 dures Act.”

1 SECTION 2. Purposes. The purposes of this section are as
2 follows:

3 Public health and safety. The uniform procedures established
4 by the act seek to enhance public health and safety by increasing
5 compliance by motor carriers with state requirements for the safe
6 transportation of hazardous materials.

7 Entrance into the Alliance for Uniform Hazmat Transportation
8 Procedures. The purpose of this section is to enable the Common-
9 wealth to participate in and enter into the Alliance for Uniform
10 Hazmat Transportation Procedures (“the Uniform Program”).

11 Establish a uniform program for hazardous material and haz-
12 ardous waste transportation. In conformity with the Uniform Pro-
13 gram, the Commonwealth shall establish, implement and
14 administer a uniform registration and permitting program for per-
15 sons who transport (optional: or ship) hazardous material or haz-
16 ardous waste by motor vehicle on the public highways in
17 interstate or intrastate commerce.

18 Retention of enforcement authority. It is the intention of the
19 legislature that the Commonwealth shall retain enforcement

20 authority under the agreement. Nothing in the Uniform Program
21 shall limit the authority of the Commonwealth from enforcing
22 laws governing the operation of hazardous materials motor car-
23 riers.

24 Base state program. The Uniform Program is implemented
25 through a single base state, with reciprocal recognition of base
26 state-issued credentials in other participating states. In its role as a
27 base state, the Commonwealth shall adhere to all requirements
28 applying to base states under the Uniform Program.

1 SECTION 3. Definitions. For the purposes of this section, the
2 following words and phrases have the meanings given to them in
3 this section:

4 “Alliance for Uniform Hazmat Transportation Procedures
5 (AUHMTP)” means the group of states that have adopted the rec-
6 ommendations concerning uniform forms and procedures for haz-
7 ardous materials transportation registration and permitting
8 pursuant to 49 CFR 5119.

9 “Applicant” means a motor carrier that completes the required
10 application forms necessary to be considered to receive a uniform
11 program registration and/or permit credential. Complete means all
12 application requirements are met, fees are remitted, insurance
13 requirements are met, and other requirements are met that a state
14 may deem appropriate.

15 “Base state” means the state selected by a carrier according to
16 the procedures established by the agreement.

17 “Base state agreement” means the agreement between partici-
18 pating states electing to register or permit carriers of hazardous
19 materials or hazardous waste.

20 “Credential” means the document issued by the base state indi-
21 cating that a motor carrier has successfully registered and received
22 a permit allowing it to transport hazardous materials/hazardous
23 waste in participating states. (Note: A state may elect to only reg-
24 ister motor carriers.)

25 “Department” means the Massachusetts Highway Department.

26 “Designated hazardous material” means a hazardous material
27 described in the Code of Federal Regulations, Title 49,
28 Section 107.6-1.

29 “Hazardous material” means any of the following:

30 a hazardous material of a type or in a quantity that requires the
31 transport vehicle to be placarded in accordance with the Code of
32 Federal Regulations, Title 49, Part 172; or

33 a hazardous substance or marine pollutant when transported in
34 bulk packaging as defined in the Code of Federal Regulations,
35 Title 49, Section 171.8.

36 a hazardous waste, which means hazardous waste of a type and
37 amount that requires the shipment to be accompanied by a uni-
38 form hazardous waste manifest described in the Code of Federal
39 Regulations, Title 40, Part 262, including state-designated haz-
40 ardous wastes when a list of state-designated hazardous wastes
41 has been filed by the state with the national repository under the
42 uniform program.

43 “Hazardous material transportation” means the transportation
44 of hazardous material or hazardous waste, or both, on the public
45 highways.

46 “Letter of filing” means a letter from a participating state to an
47 applicant that has completed the application process indicating the
48 applicant’s compliance with application requirements of the Uni-
49 form Program, which is valid for up to 360 days. Letters of filing
50 shall only be issued to carriers that have filed complete applica-
51 tions. If the application is incomplete, the base state shall notify
52 the applicant of the deficiencies and indicate that the issuance of
53 the letter of filing is subject to the applicant providing, in writing
54 on the appropriate forms, the missing information. A letter of
55 filing shall serve as a provisional credential.

56 “Motor carrier” means a for-hire motor carrier or a private
57 motor carrier. The term includes a motor carrier’s agents, officers
58 and representatives as well as employees responsible for hiring,
59 supervising, training, assigning, or dispatching of drivers and
60 employees concerned with the installation, inspection, and main-
61 tenance of motor vehicle equipment and/or accessories. This defi-
62 nition is found in 9 CFR 390.5 under “motor carrier.”

63 “Motor vehicle” has the meaning given by 49 CFR 390.5, e.g.
64 any vehicle, machine, tractor, trailer or semi-trailer propelled or
65 drawn by mechanical power and used upon the highways in the
66 transportation of passengers or property, or any combination
67 thereof determined by the Federal Highway Administration, but

68 does not include any vehicle, locomotive or car operated exclu-
69 sively on a rail or rails or a trailer bus operated by electric power
70 derived from a fixed overhead wire, furnishing local passenger
71 transportation similar to street-railway service.

72 “Participating state” means a state electing to participate in the
73 uniform program by entering into the base state agreement.

74 “Permit” means the authority granted to qualified motor car-
75 riers, that have been reviewed under procedures consistent with
76 those recommended by the AUHMTP.

77 “Person” means an individual, firm, co-partnership, coopera-
78 tive, company, association, limited liability company, corporation
79 or public entity.

80 “Power unit” means a truck or truck tractor as defined in 49
81 CFR 390.5. A truck means any self-propelled commercial motor
82 vehicle except a truck tractor, designed and/or used for the trans-
83 portation of property. A truck tractor means a self-propelled com-
84 mercial motor vehicle designed and/or used primarily for drawing
85 other vehicles.

86 “Principal place of business” means the state in which a motor
87 carrier maintains its central records relating to the transportation
88 of hazardous materials.

89 “Public entity” means a carrier who is a federal or state agency
90 or political subdivision.

91 “Registration” means the process by which a motor carrier of
92 hazardous materials is identified by the base state.

93 “Shipper” means a person who offers a hazardous material to
94 another person for shipment or who causes a hazardous material
95 to be transported or shipped by another person, which maintains
96 facilities in the Commonwealth.

97 “Uniform application” means the uniform motor carrier regis-
98 tration and permit application form and accompanying documents
99 established under the uniform program.

100 “Uniform Program” means the forms and procedures developed
101 pursuant to the “Hazardous Materials Transportation Uniform
102 Safety Act of 1990,” United States Code, Title 49, Section 5119,
103 known as the Alliance for Uniform Hazmat Transportation Proce-
104 dures in reports submitted to the U.S. Department of Transporta-
105 tion in 1993 and 1996, as modified and amended pursuant to 49
106 U.S.C. 5119(b), and as contained in the current AUHMTP State
107 Program Administrators’ Manual.

1 SECTION 4. Entrance into the uniform program. The Com-
2 monwealth shall enter into the Uniform Program for Hazardous
3 Materials Transportation Registration and Permitting developed
4 by the Alliance for Uniform Hazmat Transportation Procedures.
5 The Department shall adopt all rules and regulations necessary to
6 establish, implement, and administer the terms of the Uniform
7 Program including, but not limited to, base state duties and
8 responsibilities, participation in AUHMTP governance activities,
9 support of centralized AUHMTP activities and dispute resolution.
10 In administering the Uniform Program, the Department shall use
11 the uniform application and supporting documents and follow the
12 administrative guidance of the AUHMTP.

1 SECTION 5. General requirements.

2 No motor carrier may transport a hazardous material by motor
3 vehicle in the Commonwealth unless it has complied with the
4 terms of this Article.

5 No shipper may offer a designated hazardous material for ship-
6 ment or cause a designated hazardous material to be transported or
7 shipped in the Commonwealth unless it has complied with this
8 Article.

1 SECTION 6. Hazardous materials transportation registration
2 and permit.

3 A motor carrier shall determine its base state in the following
4 manner:

5 A motor carrier that has its principal place of business in this
6 state shall designate this state as its base state.

7 A motor carrier that has its principal place of business outside
8 of this state shall determine its base state designation by the
9 highest number of International Registration Plan, International
10 Fuel Tax Agreement or equivalent miles traveled among the states
11 participating in the uniform program.

12 A motor carrier that designates this state as its base state pur-
13 suant to subsection (a) shall register with and obtain a permit from
14 the department prior to transporting hazardous materials within
15 this state.

16 A motor carrier that designates another participating state as its
17 base state pursuant to subsection (a) shall register with and obtain

18 a permit from that state, with the appropriate fees paid for this
19 state, prior to transporting hazardous materials in this state.

20 A motor carrier who engages in the interstate transportation of
21 a hazardous material and who is required to register its hazardous
22 material transportation in this state shall file parts I, II and IV of
23 the uniform application with the Department and pay an adminis-
24 trative processing fee and an apportioned vehicle registration fee.
25 The amount of the apportioned vehicle registration fee must be
26 calculated under Section 5.

27 A motor carrier who engages only in the intrastate transporta-
28 tion of a hazardous material and who is required to register its
29 hazardous material in this state shall file parts I and IV of the uni-
30 form application with Massachusetts Highway Department, and
31 pay a registration fee as determined by the Massachusetts
32 Highway Department.

33 Upon a motor carrier's compliance with this section, the
34 Department shall issue a registration credential and permit to the
35 carrier. A registration credential must include a company registra-
36 tion number. A registration is valid for one year from the date a
37 notice of registration form is issued. A permit is valid for three
38 years from the date issued or until a motor carrier fails to renew
39 its registration, whichever occurs first.

40 A motor carrier shall maintain a copy of the registration creden-
41 tial in each power unit used to transport hazardous materials in all
42 participating states. The registration credential and permit are not
43 transferable between motor carriers. The original registration cre-
44 dential and permit shall be maintained at the motor carrier's prin-
45 cipal place of business as noted on the credentials, and shall be
46 available for inspection during normal business hours.

47 The Commonwealth may issue a "letter of filing" to an appli-
48 cant that has filed a completed application in cases where the
49 Commonwealth is unable to process such application within the
50 Uniform Program timeframe.

51 A motor carrier may obtain, for intrastate transportation only, a
52 single-trip permit in lieu of a notice of registration form and a
53 permit. The single-trip permit shall expire 72 hours after issuance,
54 it shall only be valid within the borders of the Commonwealth,
55 and a fee shall be assessed for the single-trip permit.

1 SECTION 7. Vehicle registration fee calculation.

2 The apportioned vehicle registration fee required under
3 section 3 and section 4 shall be equal to the percentage of trans-
4 portation in this state multiplied by the percentage of all haz-
5 ardous materials transportation or hazardous waste transportation,
6 multiplied by the total number of power units operated, multiplied
7 by a per-vehicle fee and shall be calculated as follows:

8 A motor carrier shall determine its percentage of transportation
9 in this state by dividing the number of miles traveled in this state
10 under the international registration plan during the previous year
11 by the number of miles it traveled nationwide under the interna-
12 tional registration plan. If a motor carrier operated only in this
13 state, its percentage is 100%. If a motor carrier is not registered in
14 the international registration plan, the motor carrier shall calculate
15 the number of miles traveled using the method in the international
16 registration plan. If a motor carrier operates more than 1 fleet
17 under the international registration plan, the motor carrier may
18 calculate each fleet's contribution to the motor carrier's total fee
19 separately. A motor carrier who operated in another state under a
20 reciprocal agreement with that state shall include the miles oper-
21 ated under the agreement as miles traveled in this state in calcu-
22 lating mileage under this section.

23 A motor carrier shall determine its percentage of hazardous
24 materials transportation or hazardous waste transportation using
25 one of the following:

26 For less than truckload shipments, it must divide the weight of
27 all of the motor carrier's hazardous materials shipments or haz-
28 ardous waste shipments transported during the previous year by
29 the total weight of all shipments transported during the same year.

30 For truckload shipments, it must divide the total number of haz-
31 ardous materials shipments or hazardous waste shipments during
32 the previous year by the total number of all shipments transported
33 during the same year.

34 A carrier that transports both less-than-truckload and truckload
35 shipments of hazardous materials shall calculate the percentage of
36 hazardous materials activity on a proportional basis.

37 A motor carrier shall use data from its most recent complete
38 fiscal year or the most recent complete calendar year in calcu-
39 lating the percentages required under this section.

40 Revenues generated through registration fees shall be used by
41 the Department for purposes that enhance the safe transportation
42 of hazardous materials. Revenues generated through permitting
43 fees shall be used only to cover the costs associated with adminis-
44 tering the permit process. The Department may develop a fee
45 structure associated with the level of effort required to review
46 individual applications as long as the state provides an estimate of
47 charges to the applicant and establishes an appeals process. Rev-
48 enues generated through the processing fee shall be used to cover
49 costs associated with administering the registration process.

1 SECTION 8. Base state agreement.

2 The Department may enter into agreements with federal agen-
3 cies, a national repository, or other participating states as needed
4 to allow for the reciprocal registration and permitting of motor
5 carriers transporting hazardous materials or hazardous waste. The
6 agreements may include procedures for determining base states,
7 the collection and distribution of fees, dispute resolution, the
8 exchange of information for reporting and enforcement, and other
9 provisions necessary to administer this act and the Uniform Pro-
10 gram.

11 The Department may make payments to agencies of other par-
12 ticipating states in the Uniform Program for the purposes of reim-
13 bursement of apportioned registration permit fees.

14 The Department may make payments to a national repository
15 for the purposes of facilitating this agreement.

16 The Department may develop the necessary forms, applica-
17 tions, and software required to implement this act.

1 SECTION 9. Enforcement.

2 The Department may inspect or examine any motor vehicle or
3 facility operated by a motor carrier, or conduct investigations,
4 audits, or compliance reviews as necessary to determine compli-
5 ance with this act and the Uniform Program, or to determine eligi-
6 bility for registration or permitting under this act and the Uniform
7 Program.

8 The Department may inspect and electronically reproduce any
9 papers, books, records, documents, or evidentiary material neces-
10 sary to determine if a motor carrier is complying with this act and

11 the Uniform Program, or to determine eligibility for registration
12 or permitting under this act and the uniform program.

13 The Department also may conduct investigations and audits
14 necessary to determine if a motor carrier is entitled to a permit or
15 to make suspension or revocation determinations.

16 A person who fails to comply with this act is responsible for a
17 state civil infraction and may be subject to a fine. This may be per
18 violation or a per day penalty.

1 SECTION 10. Suspension, revocation and denial.

2 The Department shall immediately suspend or revoke a regis-
3 tration or permit, or deny an application for a registration or
4 permit, upon determination of any of the following conditions:

5 The motor carrier made a materially false or misleading state-
6 ment in an application.

7 The motor carrier's operation consists of one or more serious or
8 repeated violations of the law of this state.

9 The motor carrier has been issued an unsatisfactory rating
10 under the motor carrier rating system developed by the United
11 States Department of Transportation.

12 The motor carrier is under a current out of service order (49
13 CFR 395.13, 396.9(c)(12)).

14 The motor carrier does not maintain the appropriate level of
15 financial liability coverage mandated by the laws of this state.

16 The motor carrier has exhibited a reckless disregard for the
17 public and the environment.

18 If the Department determines that any of the conditions of sub-
19 section (a) exist, the Department shall do one (1) of the following,
20 as appropriate:

21 Suspend or revoke the registration credential or permit previ-
22 ously issued under this act.

23 Suspend or revoke the hazardous materials or hazardous waste
24 transportation operations in this state by a motor carrier operating
25 under a registration or permit issued by another participating state.

26 Deny an application for registration or permit by a motor car-
27 rier.

28 Upon revocation, suspension, or application denial, the Depart-
29 ment shall notify the motor carrier, in writing, by certified mail, of
30 the reasons for suspension, revocation, or application denial, and

31 indicate the steps necessary for reinstatement. In the case of a sus-
32 pension, the Department shall also indicate the date by which
33 compliance is required prior to revocation being issued. The
34 Department shall also indicate the steps provided for appeal of
35 suspension, revocation or application denial.

36 Upon notification of suspension, revocation, or application
37 denial, a motor carrier may submit a written request for a con-
38 tested case hearing pursuant to chapter 30A with the the Depart-
39 ment, by certified mail, within 15 days of receipt of the notice of
40 suspension, revocation, or application denial. A contested case
41 hearing shall be scheduled within 30 days of the receipt of the
42 request for a contested case.

43 The Department may reinstate a notice of registration form or
44 permit that was suspended pursuant to this section if the Depart-
45 ment is satisfied that the violations causing the suspension have
46 been corrected and the motor carrier's operations have changed
47 sufficiently to prevent further occurrences of violations.

48 The Department may issue a registration credential or permit
49 that was previously denied to a motor carrier if the department
50 was satisfied that the violations causing the denial have been cor-
51 rected and the motor carrier's operations have changed suffi-
52 ciently to prevent further occurrences of the violations.

1 SECTION 11. Preemption.

2 Any hazardous materials transportation registration or permit-
3 ting program administered or enforced by any state agency, city,
4 county, or other political subdivision in the state is preempted and
5 superceded.

1 SECTION 12. Commonwealth participation in AUHMTP gov-
2 ernance and central activities.

3 To become party to the Uniform Program, the Commonwealth
4 shall meet the requirements of admittance as contained in the Uni-
5 form Program Administrator's manual and petition the Governing
6 Board for admittance.

7 As required by Uniform Program procedures, the Common-
8 wealth shall appoint a person to attend all meetings of the
9 AUHMTP and serve on the Alliance Governing Board as appro-
10 priate.

11 Massachusetts Highway Department shall supply information
12 as requested to the AUHMTP data repository.

13 The Department shall adhere to AUHMTP requirements
14 regarding the assessing of fees to support central AUHMTP func-
15 tions. Such fees will be paid by the Commonwealth to the
16 AUHMTP based on the Alliance fee schedule.